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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAULINO HERRERA-HERNANDEZ,

Defendant.

Case No.: 14-cr-3571-LAB

UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTIONS TO:

(1) COMPEL DISCOVERY;
(2) PRESERVE EVIDENCE;
(3) GRANT LEAVE TO FILE FURTHER MOTIONS

TOGETHER WITH STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Laura E. Duffy, United States Attorney, and Benjamin J. Katz, Assistant United States Attorney, and hereby files its Response in Opposition to the above-referenced motions. This Response in Opposition is based upon the files and records of the case, together with the attached statement of facts and memorandum of points and authorities.

I.

STATEMENT OF THE CASE

On or about December 11, 2014, defendant Carlos Aguirre-Perez ("Defendant") waived Indictment and entered a plea of not guilty to a single-count criminal Information, charging him with Removed Alien Found in the United States, in violation of Title 8, United States Code, Sections 1326 (a) and (b).

II.

STATEMENT OF FACTS

On or about November 14, 2014, at approximately 2:00 a.m., Defendant was found attempting to conceal himself in some brush approximately five miles east of the Otay Mesa, California Port of entry and eight miles north of the United States-Mexico international border. When questioned by the arresting Border Patrol agent, Defendant admitted that he was a citizen of Mexico without any documentation that would allow him to legally enter the United States.

After being placed under arrest, Defendant was advised of his *Miranda* rights. He waived those rights, and admitted that he is a citizen of Mexico who entered the United States illegally. He also admitted that he had previously been deported and has not requested permission to renter the United States.

III.

ARGUMENT

A. MOTION TO COMPEL DISCOVERY

To date, the United States has produced 138 pages of discovery (including reports of the arresting officers and agents, criminal history reports, documents from Defendant's A-File concerning his prior removals, immigration history, and citizenship) and one DVD showing the Defendant's post-arrest statement. The United States will continue to provide additional discovery as it becomes available.

The United States also recognizes and acknowledges its obligation pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), the Jencks Act, and Rules 12 and 16 of the Federal Rules of Criminal Procedure. The United States has complied and will continue to comply with its discovery obligations going forward. To date, the United States has received no reciprocal discovery.

As to exculpatory information, the United States is aware of its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), and will comply. The United States will also produce any evidence of bias/motive and impeachment or criminal investigation of any of its witnesses of which it becomes aware. An inquiry pursuant to *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991) will also be conducted.

The United States will provide a list of witnesses in its trial memorandum. The grand jury transcript of any person who will testify at trial will also be produced.

The United States has provided information within its possession or control pertaining to the prior criminal history of Defendant. If the United States intends to offer any evidence under Rule 404(b) of the Federal Rules of Evidence, it will provide notice promptly to Defendant in accordance with Federal Rules of Evidence 404(b)(2). The United States will produce any reports of experts that it intends to use in its case-in-chief at trial or such reports as may be material to the preparation of the defense.

In sum, the United States has already produced charging documents, investigative reports, removal documents, and criminal history rap sheets in this case. To the extent

Defendant requests specific documents or types of documents, the United States will continue to disclose any and all discovery required by the relevant discovery rules. Accordingly, the United States respectfully requests that no orders compelling specific discovery be made at this time.

B. MOTION TO PRESERVE EVIDENCE

The United States has taken steps to preserve the evidence in this case. Accordingly, a Court order is not necessary.

C. MOTION FOR LEAVE TO FILE FURTHER MOTIONS

The United States does not oppose the filing of additional motions so long as those motions are based upon newly-produced discovery or newly obtained evidence and the United States is given an opportunity to respond.

DATED: January 22, 2015

Respectfully submitted,

LAURA E. DUFFY
United States Attorney

/s/Benjamin J. Katz
Assistant United States Attorney